



POLICE DEPARTMENT

November 3 , 2010

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Haytham Khalil
Tax Registry No. 927024
Police Service Area 2
Disciplinary Case Nos. 84799/08 & 86221/10

The above-named member of the Department appeared before me on August 4, 2010 and October 1, 2010, charged with the following:

Disciplinary Case No. 84799/08

1. Said Sergeant Haytham Khalil, while assigned to Patrol Borough Manhattan South, on or about December 6, 2007, did unlawfully, intentionally, and knowingly access a computer without authorization and did exceed authorized access, and thereby did obtain information from a department and agency of the United States, to wit: said Sergeant accessed a computer system which contained information maintained by the FBI's National Crime Information Center and as a result obtained information regarding an individual listed on a terror watch list.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
TITLE 18, UNITED STATES CODE SECTION 1030(a)(2)(B)

Disciplinary Case No. 86221/10

1. Said Sergeant Haytham Khalil, while assigned to Viper 7, on or about September 29, 2009, while off-duty, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Sergeant failed to return his Department issued vehicle parking permit when such permit had expired.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT/PROHIBITED
CONDUCT

2. Said Sergeant Haytham Khalil, while assigned as indicated in Specification #1, on or about September 29, 2009, while off-duty, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Sergeant displayed an

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expired Department issued parking permit in a vehicle parked in a safety zone.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT/PROHIBITED
CONDUCT

The Department was represented by Amy Avila, Esq., Department Advocate's Office, and the Respondent was represented by Andrew Quinn, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charges in both disciplinary cases. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pleaded Guilty, is found Guilty.

SUMMARY OF EVIDENCE IN MITIGATION

The Respondent testified in his own behalf. The Respondent also offered in evidence a Defendant's Memorandum in Aid of Sentencing [Respondent's Exhibit (RX A)] he submitted in Federal court and the transcript of his sentence hearing in the *Matter of United States of America v. Haytham Khalil* (RX B).

The Respondent has been a member of the Department for almost ten years and is currently assigned to VIPER Unit 7 in Brooklyn North. When he first joined the Department, he worked in the 60 Precinct. He was promoted to sergeant after five years and was assigned to the First Precinct. From there he went to work in the Manhattan South Investigation Unit. The Respondent said he is of Egyptian and Persian background and speaks, reads and writes fluent Arabic. He worked at the Intelligence Division for three months in 2003 to help on a case doing translation.

In 2007, he joined the Facebook website and had contact with a woman named Saswan Tawfik, who had been a friend of his in the past. He had not seen her in "12, 15" years and she now lived in Canada. He described their relationship as "a regular friendship" and never one that was romantic in nature.

The Respondent stated:

While we were talking, she explained that she had four kids, one of them is paralyzed, and she used to live in Vermont, and the hospital gave her a compensation of about \$400,000 or something like that. I don't remember the exact amount, and her husband took all the money and he just left. She doesn't know where he's about, and now he came back seeking child custody...She was living with four kids at her parents' house and she was having a very rough time.

The Respondent explained that he communicated with Tawfik through the computer and he also had telephone conversations with her. He was clear that Tawfik never asked him to take any action on her behalf, nor did she solicit or request him to do anything for her. Nonetheless he took some action regarding her situation.

Tawfik told the Respondent that her estranged husband, Ibrahim Awada, was seeking child custody and she did not know where he lived. She did not know anything about him and all communications were through his lawyer. The Respondent said he asked her for her husband's name and he ran it through the National Crime Information Center (NCIC) database maintained by the Federal Bureau of Investigations (FBI). She did not ask the Respondent to do this and he did it on his own. He did not tell her why he had asked for Awada's information or what he intended to do with it.

When asked why he ran Awada's name in the database, the Respondent explained, "I just felt that she's going through a situation and she has a paralyzed kid and she has no money to spend and he just ran away with the money."

Explaining how he got onto the system, the Respondent stated that each sergeant in the office had a terminal. They logged in using their last name, tax number and password. They were thus logged onto the server with their identification. He explained that the E-Justice database gives a "Round Robin" on a person, that is, arrest information for all 50 states [via NCIC].

The Respondent stated that he could not access E-Justice on his own. There was a lieutenant in the office who had a password and every time E-Justice access was needed, the lieutenant's password would be used. He said that before he ran Awada's name he contacted the lieutenant and obtained permission to use his password. The lieutenant had left the unit several days earlier and had been reassigned to IAB. The Respondent noted that the lieutenant did not have to give him the password as it was already in the system but that he had still requested permission to use it.

When the Respondent ran Awada's name, he learned that Awada was on a terrorist watchlist. He did not remember the specific language in the NCIC report. The Respondent indicated that before he accessed the report he had no reason to believe that Awada was on such a watchlist. What he had been seeking was an arrest record and a residence address.

After he accessed the report, the Respondent told Tawfik what he found and sent her a copy of the NCIC Repository Search [Department Exhibit (DX) 1]. She had not requested him to do this. He did not know if there were other ways to learn if this person was on the terrorist watchlist. He did not have any further contact with Tawfik after that. He was never promised or offered anything in return for sending her this information.

Explaining his motive again, the Respondent stated, "After I told her what I found

out, she was begging me, she said this is going to help me in the child custody battle and you don't want my sons to go to a person like that, so I really felt bad for her and I sent it over."

Once he sent the report to Tawfik, the Respondent had no idea what she did with it. In November 2008, after finishing his tour and going home, the Respondent was approached by FBI agents who asked him if he knew the woman in question and he told them he did. The agent showed him the E-Justice search report and asked if he had sent it her and he said he did. The Respondent stated that he did not make any effort to interfere with the FBI investigation.

The Respondent testified that he later surrendered to the Federal authorities. He believed this occurred on November 29, 2008. He was charged with a misdemeanor, but he did not remember the name of the statute or the section of law he violated [Unauthorized Access or Exceeding the Authorized Use of a Government Database, Title 18 of the United States Code § 1030(a)(2)(B)]. In February 2009, he pled guilty to this charge and in April 2009, he was sentenced to one year probation and a \$500 fine, which he paid. He completed his probation without incident.

With regard to his history with this Department, the Respondent said that he has always received evaluations that rated him as competent or highly competent. He has no chronic sick record and has never been the subject of disciplinary action before. He has received "a couple" of Department medals. He has made gun arrests. In one instance, he arrested an intoxicated driver in possession of a gun. He was involved in the pursuit and apprehension of a carjacker with a shotgun. He also made arrests for grand larceny auto and robberies. Overall, he approximated his arrests as 45 to 50.

The Respondent said that he made "a colossal mistake" in this case. He realized this when he was approached by the FBI. Up to that point, all he thought he had done was help Tawfik out. He never received any benefit for what he had done.

On cross-examination, the Respondent indicated that he did not think about what he did on December 6, 2007 as criminal but he agreed it was. He agreed that he did not have a code to access the E-Justice database and that he used his former lieutenant's code to access the system. He agreed that he had previously used that code to conduct Department business and understood that the use of the code was only to be for Department business. He knew that E-Justice was only to be used by qualified law enforcement personnel.

The Respondent said he told the lieutenant that he needed to use the code and agreed that the lieutenant trusted him. He agreed that he did not tell the lieutenant about Awada or Tawfik and he did not tell the lieutenant he was going to help a friend out, nor did he mention the custody dispute. He was not aware that the lieutenant was subject to discipline for giving him the code.

The Respondent said that when he accessed E-Justice, he was not aware that he was engaging in misconduct. He agreed that he was a member of the Manhattan South Investigations Unit which investigated misconduct by members of the service and that he knew that computers were only for Department business. He denied knowing that it was misconduct when he researched Awada on the E-Justice system. He said running that name was not personal business for him but he agreed it was outside of his duties. He then agreed that running the name for someone who was having a difficult time was personal business. He also agreed that the search was not in connection with any case he

was assigned by the Department.

The Respondent did not recall a warning on the E-Justice database that said that unauthorized use by a person could constitute a state or Federal offense. He had been on the database two or three time before that.

The Respondent agreed that he accessed E-Justice to help Tawfik and that she was involved in a custody battle with her estranged husband. He denied that he was trying to "dig up dirt" but was trying to find out Awada's address or whereabouts or if he was in jail. He did not know if the information he obtained would help Tawfik in her custody case. She was not a close friend and he located her on Facebook.

While looking at the NCIC Repository Search (DX 1), the Respondent agreed that at the bottom of the page it said not to advise the subject individual that he is on a watchlist. It also warned to approach the person with caution. The Respondent denied reading the warning that the individual named in the search should not be advised that he was on a watchlist before he sent the report to Tawfik. The Respondent agreed that, given that warning, he should not have distributed the document.

The Respondent agreed that he had been compliant with the authorities and that he pled guilty in Federal court.

Disciplinary Case No. 86221/10 involved failing to turn in an expired Department-issued parking permit and displaying that parking permit while parked in a safety zone. After initially saying he could not plead guilty to Specification No. 2 because he did not leave the parking permit out on display as alleged, the Respondent reconsidered his earlier position and entered pleas of guilty to both specifications in that case.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined, see *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on September 29, 2000. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The most serious charge is contained in Disciplinary Case No. 84799/08 and involves accessing the E-Justice database in violation of Federal law. Although not specifically part of the single specification in this case, the Respondent has admitted to sending the report he obtained from this improper use of the database to his friend in Canada. Also not part of the specification, but admitted by the Respondent, is the fact that he pled guilty to a Federal misdemeanor.

The plea offered to the Respondent in this case was a loss of 31 suspension days previously served, the loss of 10 vacation days, dismissal probation and vested interest retirement.

The basic question here is whether the Respondent should be separated from this Department. This Court does not believe that separation is necessary or appropriate. There are several reasons for this.

The first is that the conduct in this case was foolish but not venal. There was no intent to undermine national security or the integrity of any criminal investigation. All of the evidence suggests that the effort here was a misguided attempt to help a woman who was victimized by the individual who was on the watchlist.

This is borne out by the fact that the Respondent was only charged with a single

misdeemeanor in Federal court. It is also borne out in the sentence imposed which did not include any jail time. Indeed, while the assistant United States attorney (AUSA) noted that the consequences of Respondent's action could have been far worse than they were, he offered no objection to the light sentence.

Another reason to consider allowing the Respondent to remain with the Department are the comments of the Federal Magistrate, the Hon. Michael H. Dolinger and AUSA Loyaan Egal at the sentence proceeding. The judge made clear that he had no intention of "intruding on the broad discretion of the police department in these sorts of personnel matters" but expressed the hope that the Department would take into account the "obviously sterling history of [the Respondent's] employment with the department and [his] other community-based activities and the like...and that it will find a way of ensuring that [the Respondent's] services to the community continue to be available in the way that they were in the past."

AUSA Egal was more direct in his comments. He said: "[I]f the NYPD was to put Sergeant Khalil back, on full-time duty and allow him to carry a firearm, there's obviously no objection from the government on that." Magistrate Dolinger then added, "And I have no problem with that." (see RX B, pages 9 -11).

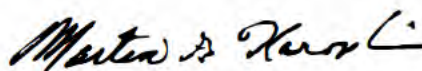
While these comments are not intended to be controlling, nor are they controlling over the decision of this Department, they merit strong consideration.

Additionally the Respondent's record with this Department justifies allowing him to continue to work with this Department.

While this Court is not recommending separation from the Department, a significant penalty is appropriate for what Magistrate Dolinger correctly termed a

“colossal lapse of judgment.” This Court therefore recommends that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to § 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner’s discretion and may be terminated at anytime without further proceedings. Further this Court recommends that the Respondent forfeit 31 days already served on suspension and that he also forfeit an additional 29 vacation days, for a total forfeiture of 60 penalty days.

Respectfully submitted,



Martin G. Karopkin
Deputy Commissioner Trials

APPROVED
JAN 11 2011

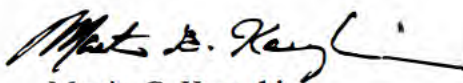
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT HAYTHAM KHALIL
TAX REGISTRY NO. 927024
DISCIPLINARY CASE NOS. 84799/08 & 86221/10

The Respondent received an overall rating of 4.0 "Highly Competent" on his last three annual performance evaluations in 2009, 2008 and 2006. He has been awarded one medal for Excellent Police Duty and two medals for Meritorious Police Duty. [REDACTED]
[REDACTED]. He has made 53 arrests. The Respondent has no prior formal disciplinary record.

For your consideration.


Martin G. Karopkin
Deputy Commissioner Trials